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VICTIMS OF SEXUAL OFFENSES AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Angela Romero

Senate Sponsor: Wayne A. Harper

2

3 **LONG TITLE**

4 **General Description:**

5 This bill amends provisions related to victims of sexual offenses.

6 **Highlighted Provisions:**

7 This bill:

8 ▶ defines terms;

9 ▶ moves a statute regarding custody and parent-time for a child conceived as a result of a
10 sexual offense;

11 ▶ amends the requirements for retaining or disposing of a sexual assault kit;

12 ▶ requires an agency to provide a victim with notice of intent when the agency intends to
13 destroy or dispose of a sexual assault kit;

14 ▶ addresses the rights for victims of sexual offenses, including rights related to sexual
15 assault kits;

16 ▶ allows for the termination of parental rights of a parent who was convicted of a sexual
17 offense that resulted in conception of the child when termination is in the best interests of the
18 child; and

19 ▶ makes technical and conforming changes.

20 **Money Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 This bill provides a coordination clause.

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **30-3-10**, as last amended by Laws of Utah 2023, Chapters 44, 327

27 **53-10-902**, as renumbered and amended by Laws of Utah 2022, Chapter 430

28 **77-11c-101**, as renumbered and amended by Laws of Utah 2023, Chapter 448

29 **77-11c-201**, as enacted by Laws of Utah 2023, Chapter 448

30 **77-11c-202**, as enacted by Laws of Utah 2023, Chapter 448

31 **77-11c-301**, as renumbered and amended by Laws of Utah 2023, Chapter 448

32 **77-11c-401**, as renumbered and amended by Laws of Utah 2023, Chapter 448

33 **77-37-2**, as enacted by Laws of Utah 1987, Chapter 194

34 **77-37-3**, as last amended by Laws of Utah 2023, Chapter 448

35 **80-4-301**, as last amended by Laws of Utah 2022, Chapter 335

36 REPEALS AND REENACTS:

37 **53-10-905**, as renumbered and amended by Laws of Utah 2022, Chapter 430

38 REPEALS:

39 **76-5-414**, as enacted by Laws of Utah 2013, Chapter 193

40 **Utah Code Sections affected by Coordination Clause:**

41 **77-11c-301**, as renumbered and amended by Laws of Utah 2023, Chapter 448

42 **77-11c-302**, as enacted in S.B. 76 (2024 General Session)

43 **77-11c-401**, as renumbered and amended by Laws of Utah 2023, Chapter 448

44

45 *Be it enacted by the Legislature of the state of Utah:*

46 Section 1. Section **30-3-10** is amended to read:

47 **30-3-10 . Custody and parent-time of a child -- Custody factors -- Child**
 48 **conceived as a result of a sexual offense.**

49 (1) If a married couple having one or more minor children are separated, or the married
 50 couple's marriage is declared void or dissolved, the court shall enter, and has continuing
 51 jurisdiction to modify, an order of custody and parent-time.

52 (2) In determining any form of custody and parent-time under Subsection (1), the court
 53 shall consider the best interest of the child and may consider among other factors the
 54 court finds relevant, the following for each parent:

55 (a) evidence of domestic violence, neglect, physical abuse, sexual abuse, or emotional
 56 abuse, involving the child, the parent, or a household member of the parent;

57 (b) the parent's demonstrated understanding of, responsiveness to, and ability to meet the
 58 developmental needs of the child, including the child's:

59 (i) physical needs;

60 (ii) emotional needs;

61 (iii) educational needs;

- 62 (iv) medical needs; and
63 (v) any special needs;
- 64 (c) the parent's capacity and willingness to function as a parent, including:
- 65 (i) parenting skills;
- 66 (ii) co-parenting skills, including:
- 67 (A) ability to appropriately communicate with the other parent;
- 68 (B) ability to encourage the sharing of love and affection; and
- 69 (C) willingness to allow frequent and continuous contact between the child and
70 the other parent, except that, if the court determines that the parent is acting to
71 protect the child from domestic violence, neglect, or abuse, the parent's
72 protective actions may be taken into consideration; and
- 73 (iii) ability to provide personal care rather than surrogate care;
- 74 (d) in accordance with Subsection (10), the past conduct and demonstrated moral
75 character of the parent;
- 76 (e) the emotional stability of the parent;
- 77 (f) the parent's inability to function as a parent because of drug abuse, excessive
78 drinking, or other causes;
- 79 (g) whether the parent has intentionally exposed the child to pornography or material
80 harmful to minors, as "material" and "harmful to minors" are defined in Section
81 76-10-1201;
- 82 (h) the parent's reasons for having relinquished custody or parent-time in the past;
- 83 (i) duration and depth of desire for custody or parent-time;
- 84 (j) the parent's religious compatibility with the child;
- 85 (k) the parent's financial responsibility;
- 86 (l) the child's interaction and relationship with step-parents, extended family members of
87 other individuals who may significantly affect the child's best interests;
- 88 (m) who has been the primary caretaker of the child;
- 89 (n) previous parenting arrangements in which the child has been happy and
90 well-adjusted in the home, school, and community;
- 91 (o) the relative benefit of keeping siblings together;
- 92 (p) the stated wishes and concerns of the child, taking into consideration the child's
93 cognitive ability and emotional maturity;
- 94 (q) the relative strength of the child's bond with the parent, meaning the depth, quality,
95 and nature of the relationship between the parent and the child; and

- 96 (r) any other factor the court finds relevant.
- 97 (3) There is a rebuttable presumption that joint legal custody, as defined in Section
98 30-3-10.1, is in the best interest of the child, except in cases when there is:
- 99 (a) evidence of domestic violence, neglect, physical abuse, sexual abuse, or emotional
100 abuse involving the child, a parent, or a household member of the parent;
- 101 (b) special physical or mental needs of a parent or child, making joint legal custody
102 unreasonable;
- 103 (c) physical distance between the residences of the parents, making joint decision
104 making impractical in certain circumstances; or
- 105 (d) any other factor the court considers relevant including those listed in this section and
106 Section 30-3-10.2.
- 107 (4) (a) The person who desires joint legal custody shall file a proposed parenting plan in
108 accordance with Sections 30-3-10.8 and 30-3-10.9.
- 109 (b) A presumption for joint legal custody may be rebutted by a showing by a
110 preponderance of the evidence that it is not in the best interest of the child.
- 111 (5) (a) A child may not be required by either party to testify unless the trier of fact
112 determines that extenuating circumstances exist that would necessitate the testimony
113 of the child be heard and there is no other reasonable method to present the child's
114 testimony.
- 115 (b) (i) The court may inquire of the child's and take into consideration the child's
116 desires regarding future custody or parent-time schedules, but the expressed
117 desires are not controlling and the court may determine the child's custody or
118 parent-time otherwise.
- 119 (ii) The desires of a child 14 years old or older shall be given added weight, but is not
120 the single controlling factor.
- 121 (c) (i) If an interview with a child is conducted by the court pursuant to Subsection
122 (5)(b), the interview shall be conducted by the judge in camera.
- 123 (ii) The prior consent of the parties may be obtained but is not necessary if the court
124 finds that an interview with a child is the only method to ascertain the child's
125 desires regarding custody.
- 126 (6) (a) Except as provided in Subsection (6)(b), a court may not discriminate against a
127 parent due to a disability, as defined in Section 57-21-2, in awarding custody or
128 determining whether a substantial change has occurred for the purpose of modifying
129 an award of custody.

- 130 (b) The court may not consider the disability of a parent as a factor in awarding custody
131 or modifying an award of custody based on a determination of a substantial change in
132 circumstances, unless the court makes specific findings that:
- 133 (i) the disability significantly or substantially inhibits the parent's ability to provide
134 for the physical and emotional needs of the child at issue; and
- 135 (ii) the parent with a disability lacks sufficient human, monetary, or other resources
136 available to supplement the parent's ability to provide for the physical and
137 emotional needs of the child at issue.
- 138 (c) Nothing in this section may be construed to apply to adoption proceedings under
139 Title 78B, Chapter 6, Part 1, Utah Adoption Act.
- 140 (7) This section does not establish a preference for either parent solely because of the
141 gender of the parent.
- 142 (8) This section establishes neither a preference nor a presumption for or against joint
143 physical custody or sole physical custody, but allows the court and the family the widest
144 discretion to choose a parenting plan that is in the best interest of the child.
- 145 (9) When an issue before the court involves custodial responsibility in the event of a
146 deployment of one or both parents who are service members and the service member has
147 not yet been notified of deployment, the court shall resolve the issue based on the
148 standards in Sections 78B-20-306 through 78B-20-309.
- 149 (10) In considering the past conduct and demonstrated moral standards of each party under
150 Subsection (2)(d) or any other factor a court finds relevant, the court may not:
- 151 (a) consider or treat a parent's lawful possession or use of cannabis in a medicinal
152 dosage form, a cannabis product in a medicinal dosage form, or a medical cannabis
153 device, in accordance with Title 4, Chapter 41a, Cannabis Production Establishments
154 and Pharmacies, Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical
155 Cannabis, or Subsection 58-37-3.7(2) or (3) any differently than the court would
156 consider or treat the lawful possession or use of any prescribed controlled substance;
157 or
- 158 (b) discriminate against a parent because of the parent's status as a:
- 159 (i) cannabis production establishment agent, as that term is defined in Section
160 4-41a-102;
- 161 (ii) medical cannabis pharmacy agent, as that term is defined in Section 26B-4-201;
- 162 (iii) medical cannabis courier agent, as that term is defined in Section 26B-4-201; or
- 163 (iv) medical cannabis cardholder in accordance with Title 26B, Chapter 4, Part 2,

164 Cannabinoid Research and Medical Cannabis.

165 (11) Notwithstanding any other provision of this chapter, the court may not grant custody or
 166 parent-time of a child to a parent convicted of a sexual offense, as defined in Section
 167 77-37-2, that resulted in the conception of the child unless:

168 (a) the nonconvicted biological parent, or the legal guardian of the child, consents to
 169 custody or parent-time and the court determines it is in the best interest of the child to
 170 award custody or parent-time to the convicted parent; or

171 (b) after the date of the conviction, the convicted parent and the nonconvicted parent
 172 cohabit and establish a mutual custodial environment for the child.

173 (12) A denial of custody or parent-time under Subsection (11) does not:

174 (a) terminate the parental rights of the parent denied parent-time or custody; or

175 (b) affect the obligation of the convicted parent to financially support the child.

176 Section 2. Section **53-10-902** is amended to read:

177 **53-10-902 . Definitions.**

178 [~~For purposes of~~] As used in this part:

179 (1) "Collecting facility" means a hospital, health care facility, or other facility that performs
 180 sexual assault examinations.

181 (2) "Department" means the Department of Public Safety.

182 (3) "Restricted kit" means a sexual assault kit:

183 (a) that is collected by a collecting facility; and

184 (b) for which a victim who is 18 years old or older at the time of the sexual assault kit
 185 evidence collection declines:

186 (i) to have his or her sexual assault kit processed; and

187 (ii) to have the sexual assault examination form shared with any entity outside of the
 188 collection facility.

189 (4) "Sexual assault kit" means a package of items that is used by medical personnel to
 190 gather and preserve biological and physical evidence following an allegation of [~~sexual~~
 191 ~~assault~~] a sexual offense.

192 (5) "Sexual offense" means the same as that term is defined in Section 77-37-2.

193 [~~(5)~~] (6) "Trauma-informed, victim-centered" means policies, procedures, programs, and
 194 practices that:

195 (a) have demonstrated an ability to minimize retraumatization associated with the
 196 criminal justice process by recognizing the presence of trauma symptoms and
 197 acknowledging the role that trauma has played in the life of a victim[~~of sexual~~

198 assault or sexual abuse]; and
199 (b) encourage law enforcement officers to interact with victims [~~of sexual assault or~~
200 ~~sexual abuse~~]with compassion and sensitivity in a nonjudgmental manner.

201 (7) "Victim" means an individual against whom a sexual offense has been committed or
202 allegedly been committed.

203 Section 3. Section **53-10-905** is repealed and reenacted to read:

204 **53-10-905 . Sexual assault kit retention and disposal -- Notification.**

205 (1) As used in this section:

206 (a) "Agency" means the same as that term is defined in Section 77-11a-101.

207 (b) "Agency" includes an evidence collecting or retaining entity as defined in Section
208 77-11c-101.

209 (2) An agency with custody of a sexual assault kit shall preserve the sexual assault kit in
210 accordance with Title 77, Chapter 11c, Retention of Evidence.

211 (3) An agency shall send a notice to a victim that the agency intends to dispose of a sexual
212 assault kit if:

213 (a) the agency intends to dispose of the sexual assault kit before the applicable time
214 period described in Section 77-11c-201, 77-11c-301, or 77-11c-401 expires; and

215 (b) the victim provided a written request to the agency investigating the sexual offense
216 that the victim receive notice of when the agency intends to dispose of the sexual
217 assault kit.

218 (4) An agency shall send a notice of intent to dispose of a sexual assault kit to the victim:

219 (a) at least 180 days before the day on which the agency intends to dispose of the sexual
220 assault kit; and

221 (b) by certified mail, return receipt requested, or a delivery service that provides proof of
222 delivery.

223 (5) If a victim receives a notice of intent to dispose of a sexual assault kit, the victim may
224 submit a written request, within the 180-day period described in Subsection (4)(a), that
225 the agency retain the sexual assault kit.

226 (6) A notice of intent to dispose of a sexual assault kit shall provide the victim with
227 information on how to submit a written request described in Subsection (5).

228 (7) If an agency receives a written request to retain the sexual assault kit from the victim
229 within the 180-day period described in Subsection (4)(a), the agency shall retain the
230 sexual assault kit for the applicable time period described in Section 77-11c-201,
231 77-11c-301, or 77-11c-401.

232 Section 4. Section **77-11c-101** is amended to read:

233 **77-11c-101 . Definitions.**

234 As used in this chapter:

235 (1) "Acquitted" means the same as that term is defined in Section 77-11b-101.

236 (2) "Adjudicated" means that:

237 (a) (i) a judgment of conviction by plea or verdict of an offense has been entered by a
238 court; and

239 (ii) a sentence has been imposed by the court; or

240 (b) a judgment has been entered for an adjudication of an offense by a juvenile court
241 under Section 80-6-701.

242 (3) "Adjudication" means:

243 (a) a judgment of conviction by plea or verdict of an offense; or

244 (b) an adjudication for an offense by a juvenile court under Section 80-6-701.

245 (4) "Agency" means the same as that term is defined in Section 77-11a-101.

246 (5) "Appellate court" means the Utah Court of Appeals, the Utah Supreme Court, or the
247 United States Supreme Court.

248 (6) (a) "Biological evidence" means an item that contains blood, semen, hair, saliva,
249 epithelial cells, latent fingerprint evidence that may contain biological material
250 suitable for DNA testing, or other identifiable human biological material that:

251 (i) is collected as part of an investigation or prosecution of a violent felony offense;
252 and

253 (ii) may reasonably be used to incriminate or exculpate a person for the violent
254 felony offense.

255 (b) "Biological evidence" includes:

256 (i) material that is catalogued separately, including:

257 (A) on a slide or swab; or

258 (B) inside a test tube, if the evidentiary sample that previously was inside the test
259 tube has been consumed by testing;

260 (ii) material that is present on other evidence, including clothing, a ligature, bedding,
261 a drinking cup, a cigarette, or a weapon, from which a DNA profile may be
262 obtained;

263 (iii) the contents of a sexual assault [~~examination~~]kit; and

264 (iv) for a violent felony offense, material described in this Subsection (6) that is in
265 the custody of an evidence collecting or retaining entity on May 4, 2022.

- 266 (7) "Claimant" means the same as that term is defined in Section 77-11a-101.
- 267 (8) "Computer" means the same as that term is defined in Section 77-11a-101.
- 268 (9) "Continuous chain of custody" means:
- 269 (a) for a law enforcement agency or a court, that legal standards regarding a continuous
- 270 chain of custody are maintained; and
- 271 (b) for an entity that is not a law enforcement agency or a court, that the entity maintains
- 272 a record in accordance with legal standards required of the entity.
- 273 (10) "Contraband" means the same as that term is defined in Section 77-11a-101.
- 274 (11) "Controlled substance" means the same as that term is defined in Section 58-37-2.
- 275 (12) "Court" means a municipal, county, or state court.
- 276 (13) "DNA" means deoxyribonucleic acid.
- 277 (14) "DNA profile" means a unique identifier of an individual derived from DNA.
- 278 (15) "Drug paraphernalia" means the same as that term is defined in Section 58-37a-3.
- 279 (16) "Evidence" means property, contraband, or an item or substance that:
- 280 (a) is seized or collected as part of an investigation or prosecution of an offense; and
- 281 (b) may reasonably be used to incriminate or exculpate an individual for an offense.
- 282 (17) (a) "Evidence collecting or retaining entity" means an entity within the state that
- 283 collects, stores, or retrieves biological evidence.
- 284 (b) "Evidence collecting or retaining entity" includes:
- 285 (i) a medical or forensic entity;
- 286 (ii) a law enforcement agency;
- 287 (iii) a court; and
- 288 (iv) an official, employee, or agent of an entity or agency described in this Subsection
- 289 (17).
- 290 (c) "Evidence collecting or retaining entity" does not include a collecting facility as
- 291 defined in Section 53-10-902.
- 292 (18) "Exhibit" means property, contraband, or an item or substance that is admitted into
- 293 evidence for a court proceeding.
- 294 (19) "In custody" means an individual who:
- 295 (a) is incarcerated, civilly committed, on parole, or on probation; or
- 296 (b) is required to register under Title 77, Chapter 41, Sex and Kidnap Offender Registry.
- 297 (20) "Law enforcement agency" means the same as that term is defined in Section
- 298 77-11a-101.
- 299 (21) "Medical or forensic entity" means a private or public hospital, medical facility, or

300 other entity that secures biological evidence or conducts forensic examinations related to
 301 criminal investigations.

302 (22) "Physical evidence" includes evidence that:

303 (a) is related to:

304 (i) an investigation;

305 (ii) an arrest; or

306 (iii) a prosecution that resulted in a judgment of conviction; and

307 (b) is in the actual or constructive possession of a law enforcement agency or a court or
 308 an agent of a law enforcement agency or a court.

309 (23) "Property" means the same as that term is defined in Section 77-11a-101.

310 (24) "Prosecuting attorney" means the same as that term is defined in Section 77-11a-101.

311 (25) "Sexual assault kit" means the same as that term is defined in Section 53-10-902.

312 (26) "Victim" means the same as that term is defined in Section 53-10-902.

313 [~~25~~] (27) "Violent felony offense" means the same as the term "violent felony" is defined
 314 in Section 76-3-203.5.

315 [~~26~~] (28) "Wildlife" means the same as that term is defined in Section 23A-1-101.

316 Section 5. Section **77-11c-201** is amended to read:

317 **77-11c-201 . Retention of evidence of misdemeanor offenses.**

318 (1) An agency shall retain evidence of a misdemeanor offense for the longer of:

319 (a) the length of the statute of limitations for the offense if:

320 (i) no charges are filed for the offense; or

321 (ii) the offense remains unsolved;

322 (b) 60 days after the day on which any individual charged with the offense is acquitted if
 323 each individual charged with the offense is acquitted;

324 (c) 90 days after the day on which any individual is adjudicated for the offense if:

325 (i) each individual charged with the offense has been adjudicated;

326 (ii) there is no appeal pending in:

327 (A) an appellate court for any individual adjudicated for the offense; or

328 (B) the district court for a trial de novo for any individual adjudicated by a justice
 329 court for the offense; and

330 (iii) there is no post-trial motion pending in the court:

331 (A) for a new trial under Rule 24 of the Utah Rules of Criminal Procedure;

332 (B) to amend or make additional findings of fact under Rule 52(b) of the Utah

333 Rules of Civil Procedure; or

- 334 (C) for relief under Rule 60(b) of the Utah Rules of Civil Procedure;
- 335 (d) 30 days after the day on which any individual is adjudicated by a district court for
- 336 the offense on a trial de novo from the justice court if:
- 337 (i) each individual charged with the offense has been adjudicated by a justice court or
- 338 a district court on a trial de novo from the justice court; and
- 339 (ii) there is no appeal pending in:
- 340 (A) an appellate court for any individual adjudicated for the offense; or
- 341 (B) the district court for a trial de novo for any individual adjudicated by a justice
- 342 court for the offense; [ø]
- 343 (e) 30 days after the day on which an appellate court issues a remittitur for an appeal of
- 344 any individual adjudicated for the offense if:
- 345 (i) the appellate court's final decision upholds the individual's adjudication;
- 346 (ii) each individual charged with the offense has been adjudicated; and
- 347 (iii) there is no appeal pending in:
- 348 (A) an appellate court for any individual adjudicated for the offense; or
- 349 (B) the district court for a trial de novo for any individual adjudicated by a justice
- 350 court for the offense[-] ; or
- 351 (f) 20 years from the day on which the evidence is collected if the evidence is a sexual
- 352 assault kit.
- 353 (2) Subsection (1) does not require an agency to return or dispose of evidence of a
- 354 misdemeanor offense.
- 355 (3) An agency shall ensure that evidence of a misdemeanor offense is subject to a
- 356 continuous chain of custody.
- 357 Section 6. Section **77-11c-202** is amended to read:
- 358 **77-11c-202 . Requirements for not retaining evidence -- Preservation of sufficient**
- 359 **evidence.**
- 360 (1) An agency is not required to retain evidence of a misdemeanor offense under Section
- 361 77-11c-201 if:
- 362 (a) (i) the agency determines that:
- 363 (A) the size, bulk, or physical character of the evidence renders retention
- 364 impracticable; or
- 365 (B) the evidence poses a security or safety problem for the agency;
- 366 (ii) the agency preserves sufficient evidence of the property, contraband, item, or
- 367 substance for use as evidence in a prosecution of the offense in accordance with

- 368 this section;
- 369 (iii) the agency sends a written request under Subsection 77-11c-203(1) to the
- 370 prosecuting attorney for permission to release or dispose of the evidence; and
- 371 (iv) the prosecuting attorney grants the agency's written request in accordance with
- 372 Section 77-11c-203;
- 373 (b) a court orders the agency to return evidence that is property to a claimant under
- 374 Section 77-11a-305; or
- 375 (c) the evidence is wildlife or parts of wildlife.
- 376 (2) Notwithstanding Subsection (1), the agency may not dispose of evidence of a
- 377 misdemeanor offense that is a sexual assault kit before the day on which the time period
- 378 described in Section 77-11c-201 expires if:
- 379 (a) the agency sends a notice to the victim as described in Section 53-10-905; and
- 380 (b) the victim submits a written request for retention of the evidence within the 180-day
- 381 period described in Section 53-10-905.
- 382 ~~(2)~~ (3) (a) Subsection (1) does not require an agency to return or dispose of evidence of
- 383 a misdemeanor offense.
- 384 (b) Subsection (1)(a) does not apply when the release or disposal of evidence of a
- 385 misdemeanor offense is in compliance with a memorandum of understanding
- 386 between the agency and the prosecuting attorney.
- 387 ~~(3)~~ (4) If evidence is a controlled substance, an agency shall preserve sufficient evidence
- 388 under Subsection (1)(a)(ii) of the controlled substance by:
- 389 (a) collecting and preserving a sample of the controlled substance and a sample of
- 390 biological evidence from the controlled substance for independent testing and use as
- 391 evidence;
- 392 (b) taking a photographic or video record of the controlled substance with identifying
- 393 case numbers;
- 394 (c) maintaining a written report of a chemical analysis of the controlled substance if a
- 395 chemical analysis was performed by the agency; and
- 396 (d) if the controlled substance exceeds 10 pounds, retain at least one pound of the
- 397 controlled substance that is randomly selected from the controlled substance.
- 398 ~~(4)~~ (5) If evidence is drug paraphernalia, an agency shall preserve sufficient evidence
- 399 under Subsection (1)(a)(ii) of the drug paraphernalia by:
- 400 (a) collecting and preserving a sample of the controlled substance from the drug
- 401 paraphernalia for independent testing and use as evidence;

- 402 (b) maintaining a written report of a chemical analysis of the drug paraphernalia if a
403 chemical analysis was performed by the agency; and
404 (c) taking a photographic or video record of the drug paraphernalia with identifying case
405 numbers.

406 [~~(5)~~] (6) If evidence is a computer, the agency shall preserve sufficient evidence under
407 Subsection (1)(a)(ii) of the computer by:

- 408 (a) extracting all data from the computer that would be evidence in a prosecution of an
409 individual for the offense;
410 (b) collecting a sample of biological evidence from the computer for independent testing
411 and use as evidence; and
412 (c) taking a photographic or video record of the computer with identifying case numbers.

413 [~~(6)~~] (7) For any other type of evidence, the agency shall preserve sufficient evidence under
414 Subsection (1)(a)(ii) of the property, contraband, item, or substance by:

- 415 (a) collecting and preserving a sample of biological evidence from the property,
416 contraband, item, or substance for independent testing and use as evidence; and
417 (b) taking a photographic or video record of the property, contraband, item, or substance
418 with identifying case numbers.

419 *The following section is affected by a coordination clause at the end of this bill.*

420 Section 7. Section **77-11c-301** is amended to read:

421 **77-11c-301 . Retention of evidence for felony offenses.**

- 422 (1) Except as provided in Subsection (4) and Subsection 23A-5-201(3), an agency shall
423 retain evidence of a felony offense:
424 (a) at the discretion of the prosecuting attorney; or
425 (b) until all direct appeals and retrials are final.
- 426 (2) If the prosecuting attorney decides to retain control over the evidence of the felony
427 offense in anticipation of possible collateral attacks upon the judgment or for use in a
428 potential prosecution, the prosecuting attorney may decline to authorize the disposal of
429 the evidence.
- 430 (3) An agency shall ensure that evidence of a felony offense is subject to a continuous chain
431 of custody.
- 432 (4) An agency shall retain and preserve biological evidence of a violent felony offense in
433 accordance with Part 4, Preservation of Biological Evidence for Violent Felony Offenses.
- 434 (5) (a) Notwithstanding Subsection (1), an agency shall retain evidence of a felony
435 offense that is a sexual assault kit for at least 20 years from the day on which the

436 evidence is collected.

437 (b) An agency may not dispose of evidence of a felony offense that is a sexual assault kit
 438 before the day on which the time period described in Subsection (5)(a) expires if:

439 (i) the agency sends a notice to the victim in accordance with Section 53-10-905; and

440 (ii) the victim submits a written request for retention of the evidence within the
 441 180-day period described in Section 53-10-905.

442 *The following section is affected by a coordination clause at the end of this bill.*

443 Section 8. Section **77-11c-401** is amended to read:

444 **77-11c-401 . Preservation of biological evidence -- Procedures -- Inventory**
 445 **request.**

446 (1) Except as provided in Section 77-11c-402, an evidence collecting or retaining entity
 447 shall preserve biological evidence of a violent felony offense in accordance with this
 448 part.

449 (2) An evidence collecting or retaining entity shall preserve biological evidence of a violent
 450 felony offense[:] for the longer of:

451 [~~(a)~~ ~~for the longer of:~~]

452 [(~~i~~)] (a) the length of the statute of limitations for the violent felony offense if:

453 [~~(A)~~] (i) no charges are filed for the violent felony offense; or

454 [~~(B)~~] (ii) the violent felony offense remains unsolved;

455 [(~~ii~~)] (b) the length of time that the individual convicted of the violent felony offense or
 456 any lesser included violent offense remains in custody; [~~or~~]

457 [(~~iii~~)] (c) the length of time that a co-defendant remains in custody; or

458 (d) 20 years from the day on which the biological evidence is collected if the biological
 459 evidence is the contents of a sexual assault kit.

460 [~~(b)~~] (3) An evidence collecting or retaining entity shall ensure that biological evidence
 461 under Subsection (2) is:

462 (a) preserved in an amount and manner sufficient to:

463 (i) develop a DNA profile; and

464 (ii) if practicable, allow for independent testing of the biological evidence by a
 465 defendant; and

466 [~~(e)~~] (b) subject to a continuous chain of custody.

467 [~~(3)~~] (4) (a) Upon request by a defendant under Title 63G, Chapter 2, Government

468 Records Access and Management Act, the evidence collecting or retaining entity

469 shall prepare an inventory of the biological evidence preserved in connection with the

470 defendant's criminal case.

471 (b) If the evidence collecting or retaining entity cannot locate biological evidence
472 requested under Subsection ~~[(3)(a)] (4)(a)~~, the custodian for the entity shall provide a
473 sworn affidavit to the defendant that:

474 (i) describes the efforts taken to locate the biological evidence; and
475 (ii) affirms that the biological evidence could not be located.

476 ~~[(4) The evidence collecting or retaining entity may dispose of biological evidence before
477 the day on which the period described in Subsection (2)(a) expires if:]~~
478 ~~[(a) no other provision of federal or state law requires the evidence collecting or retaining
479 entity to preserve the biological evidence;]~~
480 ~~[(b) the evidence collecting or retaining entity sends notice in accordance with Subsection
481 (5); and]~~
482 ~~[(c) an individual notified under Subsection (5)(a) does not within 180 days after the day
483 on which the evidence collecting or retaining entity receives proof of delivery under
484 Subsection (5):]~~
485 ~~[(i) file a motion for testing of the biological evidence under Section 78B-9-301; or]~~
486 ~~[(ii) submit a written request under Subsection (5)(b)(ii).]~~

487 (5) (a) If the evidence collecting or retaining entity intends to dispose of ~~[the]~~ biological
488 evidence of a violent felony offense before the day on which the period described in
489 Subsection ~~[(2)(a)] (2)~~ expires, the evidence collecting or retaining entity shall send a
490 notice of intent to dispose of the biological evidence that:

491 ~~[(a)] (i)~~ is sent by certified mail, return receipt requested, or a delivery service that
492 provides proof of delivery, to:

493 ~~[(i)] (A)~~ an individual who remains in custody based on a criminal conviction
494 related to the biological evidence;

495 ~~[(ii)] (B)~~ the private attorney or public defender of record for each individual
496 described in Subsection ~~[(5)(a)(i)] (5)(a)(i)(A)~~;

497 ~~[(iii)] (C)~~ if applicable, the prosecuting agency responsible for the prosecution of
498 each individual described in Subsection ~~[(5)(a)(i)] (5)(a)(i)(A)~~; and

499 ~~[(iv)] (D)~~ the Utah attorney general; and

500 ~~[(b)] (ii)~~ explains that the party receiving the notice may:

501 ~~[(i)] (A)~~ file a motion for testing of biological evidence under Section 78B-9-301 if
502 the party is the individual convicted of the violent felony offense; or

503 ~~[(ii)] (B)~~ submit a written request that the evidence collecting or retaining entity

- 504 retain the biological evidence.
- 505 (b) An individual must file a motion, or submit a written request, described in
- 506 Subsection (5)(a)(ii) within 180 days after the day on which the evidence collecting
- 507 or retaining entity receives proof of delivery under Subsection (5).
- 508 (c) An evidence collecting or retaining entity shall send a notice of intent to dispose of
- 509 biological evidence that is the contents of a sexual assault kit to a victim in
- 510 accordance with Section 53-10-905.
- 511 (6) The evidence collecting or retaining entity may not dispose of biological evidence of a
- 512 violent felony offense before the day on which the time period described in Subsection
- 513 (2) expires if:
- 514 (a) the evidence collecting or retaining entity is required by federal or state law to
- 515 preserve the biological evidence; or
- 516 (b) (i) the evidence collecting or retaining entity sends notice in accordance with:
- 517 (A) Subsection (5); and
- 518 (B) Section 53-10-905 if the biological evidence is the contents of a sexual assault
- 519 kit; and
- 520 (ii) an individual notified under Subsection (5)(a) or Section 53-10-905:
- 521 (A) files a motion for testing of the biological evidence under Section 78B-9-301
- 522 within the 180-day period described in Subsection (5)(b); or
- 523 (B) submits a written request for retention of the biological evidence within the
- 524 180-day period described in Subsection (5)(b) or Section 53-10-905.
- 525 ~~[(6)]~~ (7) (a) Subject to Subsections ~~[(6)(b)]~~ (7)(b) and (c), if the evidence collecting or
- 526 retaining entity receives a written request to retain the biological evidence~~[under~~
- 527 ~~Subsection (5)(b)(ii)]~~, the evidence collecting or retaining entity shall retain the
- 528 biological evidence ~~[while the defendant remains in custody]~~ for the time period
- 529 described in Subsection (2).
- 530 (b) Subject to Subsection ~~[(6)(e)]~~ (7)(c), the evidence collecting or retaining entity is not
- 531 required to preserve physical evidence that may contain biological evidence if the
- 532 physical evidence's size, bulk, or physical character renders retention impracticable.
- 533 (c) If the evidence collecting or retaining entity determines that retention is
- 534 impracticable, before returning or disposing of the physical evidence, the evidence
- 535 collecting or retaining entity shall:
- 536 (i) remove the portions of the physical evidence likely to contain biological evidence
- 537 related to the violent felony offense; and

538 (ii) preserve the removed biological evidence in a quantity sufficient to permit future
539 DNA testing.

540 ~~[(7)]~~ (8) To comply with the preservation requirements described in this section, a law
541 enforcement agency or a court may:

542 (a) retain the biological evidence; or

543 (b) if a continuous chain of custody can be maintained, return the biological evidence to
544 the custody of the other law enforcement agency that originally provided the
545 biological evidence to the law enforcement agency.

546 Section 9. Section **77-37-2** is amended to read:

547 **77-37-2 . Definitions.**

548 ~~[H]~~ As used in this chapter:

549 (1) "Alleged sexual offender" means the same as that term is defined in Section 53-10-801.

550 ~~[(4)]~~ (2) "Child" means a person who is younger than 18 years ~~[of age]~~ old, unless otherwise
551 specified in statute. The rights to information as extended in this chapter also apply to
552 the parents, custodian, or legal guardians of children.

553 ~~[(2)]~~ (3) "Family member" means spouse, child, sibling, parent, grandparent, or legal
554 guardian.

555 (4) "HIV infection" means the same as that term is defined in Section 53-10-801.

556 (5) "Sexual assault kit" means the same as that term is defined in Section 53-10-902.

557 (6) "Sexual offense" means any conduct described in:

558 (a) Title 76, Chapter 5, Part 4, Sexual Offenses;

559 (b) Title 76, Chapter 5b, Sexual Exploitation Act;

560 (c) Section 76-7-102, incest;

561 (d) Section 76-9-702, lewdness; or

562 (e) Section 76-9-702.1, sexual battery.

563 (7) "Victim" means an individual, including a minor, against whom an offense has been
564 allegedly committed.

565 ~~[(3)]~~ "Victim" means a person against whom a crime has allegedly been committed, or
566 against whom an act has allegedly been committed by a juvenile or incompetent adult,
567 which would have been a crime if committed by a competent adult.]

568 ~~[(4)]~~ (8) "Witness" means any person who has been subpoenaed or is expected to be
569 summoned to testify for the prosecution or who by reason of having relevant
570 information is subject to call or likely to be called as a witness for the prosecution,
571 whether any action or proceeding has commenced.

572 Section 10. Section **77-37-3** is amended to read:

573 **77-37-3 . Bill of rights.**

574 (1) The bill of rights for victims and witnesses is:

575 (a) Victims and witnesses have a right to be informed as to the level of protection from
576 intimidation and harm available to them, and from what sources, as they participate
577 in criminal justice proceedings as designated by Section 76-8-508, regarding witness
578 tampering, and Section 76-8-509, regarding threats against a victim. Law
579 enforcement, prosecution, and corrections personnel have the duty to timely provide
580 this information in a form which is useful to the victim.

581 (b) Victims and witnesses, including children and their guardians, have a right to be
582 informed and assisted as to their role in the criminal justice process. All criminal
583 justice agencies have the duty to provide this information and assistance.

584 (c) Victims and witnesses have a right to clear explanations regarding relevant legal
585 proceedings; these explanations shall be appropriate to the age of child victims and
586 witnesses. All criminal justice agencies have the duty to provide these explanations.

587 (d) Victims and witnesses should have a secure waiting area that does not require them
588 to be in close proximity to defendants or the family and friends of defendants.
589 Agencies controlling facilities shall, whenever possible, provide this area.

590 (e) Victims may seek restitution or reparations, including medical costs, as provided in
591 Title 63M, Chapter 7, Criminal Justice and Substance Abuse, Title 77, Chapter 38b,
592 Crime Victims Restitution Act, and Section 80-6-710. State and local government
593 agencies that serve victims have the duty to have a functional knowledge of the
594 procedures established by the Crime Victim Reparations Board and to inform victims
595 of these procedures.

596 (f) Victims and witnesses have a right to have any personal property returned as
597 provided in Chapter 11a, Seizure of Property and Contraband, and Chapter 11d, Lost
598 or Mislaid Property. Criminal justice agencies shall expeditiously return the property
599 when it is no longer needed for court law enforcement or prosecution purposes.

600 (g) Victims and witnesses have the right to reasonable employer intercession services,
601 including pursuing employer cooperation in minimizing employees' loss of pay and
602 other benefits resulting from their participation in the criminal justice process.
603 Officers of the court shall provide these services and shall consider victims' and
604 witnesses' schedules so that activities which conflict can be avoided. Where conflicts
605 cannot be avoided, the victim may request that the responsible agency intercede with

- 606 employers or other parties.
- 607 (h) Victims and witnesses, particularly children, should have a speedy disposition of the
608 entire criminal justice process. All involved public agencies shall establish policies
609 and procedures to encourage speedy disposition of criminal cases.
- 610 (i) Victims and witnesses have the right to timely notice of judicial proceedings they are
611 to attend and timely notice of cancellation of any proceedings. Criminal justice
612 agencies have the duty to provide these notifications. Defense counsel and others
613 have the duty to provide timely notice to prosecution of any continuances or other
614 changes that may be required.
- 615 [~~(j) Victims of sexual offenses have the following rights:]~~
- 616 [~~(i) the right to request voluntary testing for themselves for HIV infection as provided
617 in Section 53-10-803 and to request mandatory testing of the alleged sexual offender
618 for HIV infection as provided in Section 53-10-802;~~]
- 619 [~~(ii) the right to be informed whether a DNA profile was obtained from the testing of
620 the rape kit evidence or from other crime scene evidence;~~]
- 621 [~~(iii) the right to be informed whether a DNA profile developed from the rape kit
622 evidence or other crime scene evidence has been entered into the Utah Combined
623 DNA Index System;~~]
- 624 [~~(iv) the right to be informed whether there is a match between a DNA profile
625 developed from the rape kit evidence or other crime scene evidence and a DNA
626 profile contained in the Utah Combined DNA Index System, provided that disclosure
627 would not impede or compromise an ongoing investigation; and]~~
- 628 [~~(v) the right to designate a person of the victim's choosing to act as a recipient of the
629 information provided under this Subsection (1)(j) and under Subsections (2) and (3).]~~
- 630 [~~(k) Subsections (1)(j)(ii) through (iv) do not require that the law enforcement agency
631 communicate with the victim or the victim's designee regarding the status of DNA
632 testing, absent a specific request received from the victim or the victim's designee.]~~
- 633 [(2) The law enforcement agency investigating a sexual offense may:]
- 634 [(a) release the information indicated in Subsections (1)(j)(ii) through (iv) upon the request
635 of a victim or the victim's designee and is the designated agency to provide that
636 information to the victim or the victim's designee;]
- 637 [(b) require that the victim's request be in writing; and]
- 638 [(c) respond to the victim's request with verbal communication, written communication, or
639 by email, if an email address is available.]

- 640 [(3) The law enforcement agency investigating a sexual offense has the following authority
641 and responsibilities:]
- 642 [(a) If the law enforcement agency determines that DNA evidence will not be analyzed in a
643 case where the identity of the perpetrator has not been confirmed, the law enforcement
644 agency shall notify the victim or the victim's designee.]
- 645 [(b) (i) If the law enforcement agency intends to destroy or dispose of rape kit evidence or
646 other crime scene evidence from an unsolved sexual assault case, the law enforcement
647 agency shall provide written notification of that intention and information on how to
648 appeal the decision to the victim or the victim's designee of that intention.]
- 649 [(ii) Written notification under this Subsection (3) shall be made not fewer than 60 days
650 prior to the destruction or disposal of the rape kit evidence or other crime scene evidence.]
- 651 [(e) A law enforcement agency responsible for providing information under Subsections
652 (1)(j)(ii) through (iv), (2), and (3) shall do so in a timely manner and, upon request of the
653 victim or the victim's designee, shall advise the victim or the victim's designee of any
654 significant changes in the information of which the law enforcement agency is aware.]
- 655 [(d) The law enforcement agency investigating the sexual offense is responsible for
656 informing the victim or the victim's designee of the rights established under Subsections
657 (1)(j)(ii) through (iv) and (2), and this Subsection (3).]
- 658 (2) In addition to the rights of a victim described in Subsection (1), a victim of a sexual
659 offense has the right to:
- 660 (a) request voluntary testing for themselves for HIV infection as described in Section
661 53-10-803;
- 662 (b) request mandatory testing of the alleged sexual offender for HIV infection as
663 described in Section 53-10-802;
- 664 (c) not to be prevented from, or charged for, a medical forensic examination;
- 665 (d) have the evidence from a sexual assault kit, or the contents of the sexual assault kit,
666 preserved for the time periods described in Title 77, Chapter 11c, Retention of
667 Evidence, without any charge to the victim;
- 668 (e) be informed whether a DNA profile was obtained from the testing of the evidence in
669 a sexual assault kit or from other crime scene evidence;
- 670 (f) be informed whether a DNA profile developed from the evidence in a sexual assault
671 kit, or from other crime scene evidence, has been entered into the Utah Combined
672 DNA Index System;
- 673 (g) be informed of any result from a sexual assault kit or from other crime scene

- 674 evidence if that disclosure would not impede or compromise an ongoing
675 investigation, including:
- 676 (i) whether there is a match between a DNA profile developed from the evidence in a
677 sexual assault kit, or from other crime scene evidence, and a DNA profile
678 contained in the Utah Combined DNA Index System; and
- 679 (ii) a toxicology result or other information that is collected from a sexual assault kit
680 as part of a medical forensic examination of the victim;
- 681 (h) be informed in writing of policies governing the collection and preservation of a
682 sexual assault kit;
- 683 (i) be informed of the status and location of a sexual assault kit;
- 684 (j) upon written request by the victim, receive a notice of intent from an agency, as
685 defined in Section 53-10-905, if the agency intends to destroy or dispose of evidence
686 from a sexual assault kit;
- 687 (k) be granted further preservation of the sexual assault kit if the agency, as defined in
688 Section 53-10-905, intends to destroy or dispose of evidence from a sexual assault kit
689 and the victim submits a written request as described in Section 53-10-905;
- 690 (l) designate a person of the victim's choosing to act as a recipient of the information
691 provided under this Subsection (2) or Subsections (3) and (4); and
- 692 (m) be informed of all the enumerated rights in this Subsection (2).
- 693 (3) Subsections (2)(e) through (g) do not require that the law enforcement agency
694 communicate with the victim or the victim's designee regarding the status of DNA
695 testing, absent a specific request received from the victim or the victim's designee.
- 696 (4) A law enforcement agency investigating a sexual offense may:
- 697 (a) release the information indicated in Subsections (2)(e) through (g) upon the request
698 of the victim of the sexual offense, or the victim's designee and is the designated
699 agency to provide that information to the victim or the victim's designee;
- 700 (b) require that the victim's request be in writing; and
- 701 (c) respond to the victim's request with verbal communication, written communication,
702 or by email if an email address is available.
- 703 (5) A law enforcement agency investigating a sexual offense shall:
- 704 (a) notify the victim of the sexual offense, or the victim's designee, if the law
705 enforcement agency determines that DNA evidence will not be analyzed in a case
706 where the identity of the perpetrator has not be confirmed;
- 707 (b) provide the information described in this section in a timely manner; and

708 (c) upon request of the victim or the victim's designee, advise the victim or the victim's
 709 designee of any significant changes in the information of which the law enforcement
 710 agency is aware.

711 (6) The law enforcement agency investigating the sexual offense is responsible for
 712 informing the victim of the sexual offense, or the victim's designee, of the rights
 713 established under this section.

714 [(4)] (7) Informational rights of the victim under this chapter are based upon the victim
 715 providing the current name, address, telephone number, and email address, if an email
 716 address is available, of the person to whom the information should be provided to the
 717 criminal justice agencies involved in the case.

718 Section 11. Section **80-4-301** is amended to read:

719 **80-4-301 . Grounds for termination of parental rights -- Findings regarding**
 720 **reasonable efforts by division.**

721 (1) Subject to the protections and requirements of Section 80-4-104, and if the juvenile
 722 court finds termination of parental rights, from the child's point of view, is strictly
 723 necessary, the juvenile court may terminate all parental rights with respect to the parent
 724 if the juvenile court finds~~any one of the following~~:

725 (a) ~~that~~the parent has abandoned the child;

726 (b) ~~that~~the parent has neglected or abused the child;

727 (c) ~~that~~the parent is unfit or incompetent;

728 (d) (i) the parent was convicted of a sexual offense, as defined in Section 77-37-2, or
 729 a comparable offense under the laws of the state where the offense occurred,
 730 against the other parent of the child;

731 (ii) the offense resulted in the conception of the child; and

732 (iii) termination is in the best interest of the child;

733 [(d)] (e) (i) ~~that~~the child is being cared for in an out-of-home placement under the
 734 supervision of the juvenile court or the division;

735 (ii) ~~that~~the parent has substantially neglected, willfully refused, or has been unable
 736 or unwilling to remedy the circumstances that cause the child to be in an
 737 out-of-home placement; and

738 (iii) ~~that~~there is a substantial likelihood that the parent will not be capable of
 739 exercising proper and effective parental care in the near future;

740 [(e)] (f) failure of parental adjustment, as defined in this chapter;

741 [(f)] (g) ~~that~~only token efforts have been made by the parent:

- 742 (i) to support or communicate with the child;
- 743 (ii) to prevent neglect of the child;
- 744 (iii) to eliminate the risk of serious harm to the child; or
- 745 (iv) to avoid being an unfit parent;
- 746 ~~[(g)]~~ (h) (i) ~~[that]~~ the parent has voluntarily relinquished the parent's parental rights to
- 747 the child; and
- 748 (ii) ~~[that]~~ termination is in the child's best interest;
- 749 ~~[(h)]~~ (i) ~~[that,]~~ after a period of trial during which the child was returned to live in the
- 750 child's own home, the parent substantially and continuously or repeatedly refused or
- 751 failed to give the child proper parental care and protection; or
- 752 ~~[(t)]~~ (j) the terms and conditions of safe relinquishment of a newborn child have been
- 753 complied with~~[, in accordance with]~~ as described in Part 5, Safe Relinquishment of a
- 754 Newborn Child.
- 755 (2) The juvenile court may not terminate the parental rights of a parent because the parent
- 756 has failed to complete the requirements of a child and family plan.
- 757 (3) (a) Except as provided in Subsection (3)(b), in any case in which the juvenile court
- 758 has directed the division to provide reunification services to a parent, the juvenile
- 759 court must find that the division made reasonable efforts to provide those services
- 760 before the juvenile court may terminate the parent's rights under Subsection (1)(b),
- 761 (c), ~~[(d), (e), (f), or (h)]~~ (e), (f), (g), or (i).
- 762 (b) Notwithstanding Subsection (3)(a), the juvenile court is not required to make the
- 763 finding under Subsection (3)(a) before terminating a parent's rights:
- 764 (i) under Subsection (1)(b), if the juvenile court finds that the abuse or neglect
- 765 occurred subsequent to adjudication; or
- 766 (ii) if reasonable efforts to provide the services described in Subsection (3)(a) are not
- 767 required under federal law, and federal law is not inconsistent with Utah law.

768 Section 12. **Repealer.**

769 This bill repeals:

770 Section **76-5-414, Child conceived as a result of sexual offense -- Custody and**

771 **parent-time.**

772 Section 13. **Effective date.**

773 This bill takes effect on May 1, 2024.

774 Section 14. **Coordinating H.B. 328 with S.B. 76.**

775 If H.B. 328, Victims of Sexual Offenses Amendments, and S.B. 76, Evidence

776 Retention Amendments, both pass and become law, the Legislature intends that,
777 on May 1, 2024:

778 (1) Section 77-11c-301 be amended to read:

779 ["] **77-11c-301. Retention of evidence for felony offenses.**

780 [(1) Except as provided in Subsection (4) and Subsection 23A-5-201(3), an
781 agency shall retain evidence of a felony offense:

782 (a) at the discretion of the prosecuting attorney; or

783 (b) until all direct appeals and retrials are final.

784 (2) If the prosecuting attorney decides to retain control over the evidence of
785 the felony offense in anticipation of possible collateral attacks upon the judgment
786 or for use in a potential prosecution, the prosecuting attorney may decline to
787 authorize the disposal of the evidence.]

788 (1) Except as provided in Subsection (4), an agency shall retain evidence of a
789 felony offense:

790 (a) for the longer of:

791 (i) the length of the statute of limitations for the felony offense if:

792 (A) charges are not filed for the felony offense; or

793 (B) the felony offense remains unsolved;

794 (ii) the length of time that any individual convicted of the felony offense, or a
795 lesser included offense, remains in custody;

796 (iii) one year after the day on which all direct appeals of the final judgment for
797 any individual convicted of the felony offense, or a lesser included offense, are
798 exhausted;

799 (iv) the length of time that a petition for postconviction relief, and any appeal
800 of the petition, is pending if an individual convicted of the felony offense files the
801 petition within the one-year time period described in Subsection (1)(a)(iii); or

802 (v) 20 years from the day on which the evidence is collected if the evidence is
803 the contents of a sexual assault kit; or

804 (b) at the discretion of the prosecuting attorney or federal prosecutor if the
805 prosecution of the felony offense resulted in an acquittal or dismissal.

806 [(3)] (2) An agency shall ensure that evidence of a felony offense is subject to
807 a continuous chain of custody.

808 (3) Subsection (1) does not require an agency to return or dispose of evidence
809 of a felony offense.

810 (4) An agency shall retain and preserve biological evidence of a violent felony
811 offense in accordance with Part 4, Preservation of Biological Evidence for Violent
812 Felony Offenses.";

813 (2) Section 77-11c-302 that is enacted by S.B. 76 be amended to read:

814 "77-11c-302. Requirements for not retaining evidence of felony offense --
815 Preservation of sufficient evidence.

816 (1) An agency is not required to retain evidence of a felony offense under
817 Section 77-11c-301 if:

818 (a) (i) the agency determines that:

819 (A) the size, bulk, or physical character of the evidence renders retention
820 impracticable or the evidence poses a security or safety problem for the agency;
821 and

822 (B) the evidence no longer has any significant evidentiary value;

823 (ii) the agency preserves sufficient evidence from the property, contraband,
824 item, or substance for use as evidence in a prosecution of the offense; and

825 (iii) a prosecuting attorney or a court authorizes the agency to return or dispose
826 of the evidence as described in Section 77-11c-303;

827 (b) a court orders the agency to return evidence that is property to a claimant
828 under Section 77-11a-305; or

829 (c) the evidence is wildlife or parts of wildlife.

830 (2) Notwithstanding Subsection (1), the agency may not dispose of evidence of
831 a felony offense that is a sexual assault kit before the day on which the time period
832 described in Section 77-11c-301 expires if:

833 (a) the agency sends a notice to the victim in accordance with Section
834 53-10-905; and

835 (b) the victim submits a written request for retention of the evidence within the
836 180-day period described in Section 53-10-905.

837 (3) Subsection (1) does not require an agency to return or dispose of evidence
838 of a felony offense.

839 (4) Subsection (1) does not apply to biological evidence of a violent felony
840 offense because an agency is required to retain biological evidence of a violent
841 felony offense as described in Part 4, Preservation of Biological Evidence for
842 Violent Felony Offenses.

843 (5) If the evidence described in Subsection (1) is a controlled substance, an

844 agency shall preserve sufficient evidence under Subsection (1)(a)(ii) of the
845 controlled substance by:

846 (a) collecting and preserving a sample of the controlled substance for
847 independent testing and use as evidence;

848 (b) taking a photographic or video record of the controlled substance with
849 identifying case numbers;

850 (c) maintaining a written report of a chemical analysis of the controlled
851 substance if a chemical analysis was performed by the agency;

852 (d) if the controlled substance exceeds 10 pounds, retaining at least one pound
853 of the controlled substance that is randomly selected from the controlled
854 substance; and

855 (e) for a violent felony offense, collecting and preserving biological evidence
856 from the controlled substance as described in Section 77-11c-401.

857 (6) If the evidence described in Subsection (1) is drug paraphernalia, an agency
858 shall preserve sufficient evidence under Subsection (1)(a)(ii) of the drug
859 paraphernalia by:

860 (a) collecting and preserving a sample of the controlled substance from the
861 drug paraphernalia for independent testing and use as evidence;

862 (b) maintaining a written report of a chemical analysis of the drug
863 paraphernalia if a chemical analysis was performed by the agency;

864 (c) taking a photographic or video record of the drug paraphernalia with
865 identifying case numbers; and

866 (d) for a violent felony offense, collecting and preserving biological evidence
867 from the drug paraphernalia as described in Section 77-11c-401.

868 (7) If the evidence described in Subsection (1) is a computer, the agency shall
869 preserve sufficient evidence under Subsection (1)(a)(ii) of the computer by:

870 (a) extracting all data from the computer that would be evidence in a
871 prosecution of an individual for the offense;

872 (b) taking a photographic or video record of the computer with identifying case
873 numbers; and

874 (c) for a violent felony offense, collecting and preserving biological evidence
875 from the computer as described in Section 77-11c-401.

876 (8) For any other type of evidence, the agency shall preserve sufficient
877 evidence under Subsection (1)(a)(ii) of the property, contraband, item, or

878 substance by:

879 (a) taking a photographic or video record of the property, contraband, item, or
880 substance with identifying case numbers; and

881 (b) for a violent felony offense, collecting and preserving biological evidence
882 as described in Section 77-11c-401."; and

883 (3) Section 77-11c-401 be amended to read:

884 **"77-11c-401. Preservation of biological evidence -- Procedures -- Inventory**
885 **request.**

886 (1) Except as provided in Section 77-11c-402, an evidence collecting or
887 retaining entity shall preserve biological evidence of a violent felony offense in
888 accordance with this part.

889 (2) An evidence collecting or retaining entity shall preserve biological
890 evidence of a violent felony offense:

891 (a) for the longer of:

892 (i) the length of the statute of limitations for the violent felony offense if:

893 (A) no charges are filed for the violent felony offense; or

894 (B) the violent felony offense remains unsolved;

895 ~~[(ii) the length of time that the individual convicted of the violent felony~~
896 ~~offense or any lesser included violent offense remains in custody; or~~

897 ~~(iii) the length of time that a co-defendant remains in custody;]~~

898 (ii) the length of time that any individual convicted of the violent felony
899 offense, or a lesser included offense, remains in custody;

900 (iii) one year after the day on which all direct appeals of the judgment for any
901 individual convicted of the violent felony offense, or a lesser included offense, are
902 exhausted;

903 (iv) the length of time that a petition for postconviction relief, and any appeal
904 of the petition, is pending if an individual convicted of the violent felony offense
905 files the petition within the one-year time period described in Subsection

906 (2)(a)(iii); or

907 (v) 20 years from the day on which the biological evidence is collected if the
908 biological evidence is the contents of a sexual assault kit; or

909 (b) at the discretion of the prosecuting attorney or federal prosecutor if the
910 prosecution of the violent felony offense resulted in an acquittal or dismissal.

911 ~~[(b)]~~ (3) An evidence collecting or retaining entity shall ensure that biological

912 evidence under Subsection (2) is:

913 (a) preserved in an amount and manner sufficient to:

914 (i) develop a DNA profile; and

915 (ii) if practicable, allow for independent testing of the biological evidence by a
916 defendant; and

917 ~~[(e)]~~ (b) subject to a continuous chain of custody.

918 ~~[(3)]~~ (4) (a) Upon request by a defendant under Title 63G, Chapter 2,
919 Government Records Access and Management Act, the evidence collecting or
920 retaining entity shall prepare an inventory of the biological evidence preserved in
921 connection with the defendant's criminal case.

922 (b) If the evidence collecting or retaining entity cannot locate biological
923 evidence requested under Subsection ~~[(3)(a)]~~ (4)(a), the custodian for the entity
924 shall provide a sworn affidavit to the defendant that:

925 (i) describes the efforts taken to locate the biological evidence; and

926 (ii) affirms that the biological evidence could not be located.

927 ~~[(4)The evidence collecting or retaining entity may dispose of biological~~
928 ~~evidence before the day on which the period described in Subsection (2)(a)~~
929 ~~expires if:~~

930 ~~(a) no other provision of federal or state law requires the evidence collecting~~
931 ~~or retaining entity to preserve the biological evidence;~~

932 ~~(b) the evidence collecting or retaining entity sends notice in accordance with~~
933 ~~Subsection (5); and~~

934 ~~(c) an individual notified under Subsection (5)(a) does not within 180 days~~
935 ~~after the day on which the evidence collecting or retaining entity receives proof of~~
936 ~~delivery under Subsection (5):~~

937 ~~(i) file a motion for testing of the biological evidence under Section 78B-9-301;~~

938 or

939 ~~(ii) submit a written request under Subsection (5)(b)(ii).]~~

940 (5) (a) If the evidence collecting or retaining entity intends to dispose of~~[the]~~
941 biological evidence of a violent felony offense before the day on which the period
942 described in Subsection ~~[(2)(a)]~~ (2) expires, the evidence collecting or retaining
943 entity shall send a notice of intent to dispose of the biological evidence that:

944 ~~[(a)]~~ (i) is sent by certified mail, return receipt requested, or a delivery service
945 that provides proof of delivery, to:

946 [(i)] (A) an individual who remains in custody based on a criminal conviction
947 related to the biological evidence;

948 [(ii)] (B) the private attorney or public defender of record for each individual
949 described in Subsection [(5)(a)(i)] (5)(a)(i)(A);

950 (C) the entity that employed the private attorney or public defender at the time
951 of the criminal conviction;

952 [(iii)] (D) if applicable, the prosecuting agency responsible for the prosecution
953 of each individual described in Subsection [(5)(a)(i)] (5)(a)(i)(A); and

954 [(iv)] (E) the Utah attorney general; and

955 [(b)] (ii) explains that the party receiving the notice may:

956 [(i)] (A) file a motion for testing of biological evidence under Section
957 78B-9-301 if the party is the individual convicted of the violent felony offense; or

958 [(ii)] (B) submit a written request that the evidence collecting or retaining
959 entity retain the biological evidence.

960 (b) An individual must file a motion, or submit a written request, described in
961 Subsection (5)(a)(ii) within 180 days after the day on which the evidence
962 collecting or retaining entity receives proof of delivery under Subsection (5)(a).

963 (c) An evidence collecting or retaining entity shall send a notice of intent to
964 dispose of biological evidence that is the contents of a sexual assault kit to a
965 victim in accordance with Section 53-10-905.

966 (6) The evidence collecting or retaining entity may not dispose of biological
967 evidence of a violent felony offense before the day on which the time period
968 described in Subsection (2) expires if:

969 (a) the evidence collecting or retaining entity is required by federal or state law
970 to preserve the biological evidence; or

971 (b) (i) the evidence collecting or retaining entity sends notice in accordance
972 with:

973 (A) Subsection (5); and

974 (B) Section 53-10-905 if the biological evidence is the contents of a sexual
975 assault kit; and

976 (ii) an individual notified under Subsection (5)(a) or Section 53-10-905:

977 (A) files a motion for testing of the biological evidence under Section
978 78B-9-301 within the 180-day period described in Subsection (5)(b); or

979 (B) submits a written request for retention of the biological evidence within the

980 180-day period described in Subsection (5)(b) or Section 53-10-905.

981 ~~[(6)]~~ (7) (a) Subject to Subsections ~~[(6)(b)]~~ (7)(b) and (c), if the evidence
982 collecting or retaining entity receives a written request to retain the biological
983 evidence~~[under Subsection (5)(b)(ii)]~~, the evidence collecting or retaining entity
984 shall retain the biological evidence ~~[while the defendant remains in custody]~~ for
985 the time period described in Subsection (2).

986 ~~[(b) Subject to Subsection (6)(c), the evidence collecting or retaining entity is~~
987 ~~not required to preserve physical evidence that may contain biological evidence if~~
988 ~~the physical evidence's size, bulk, or physical character renders retention~~
989 ~~impracticable.]~~

990 (b) Subject to Subsection (7)(c), the evidence collecting or retaining entity may
991 only return or dispose of physical evidence of a violent felony offense as
992 described in Part 3, Retention of Evidence for Felony Offenses.

993 ~~(c) If the evidence collecting or retaining entity ~~[determines that retention is~~~~
994 ~~impracticable-] is not required to retain physical evidence of the violent felony~~
995 ~~offense under Part 3, Retention of Evidence for Felony Offenses, before returning~~
996 ~~or disposing of the physical evidence, the evidence collecting or retaining entity~~
997 ~~shall:~~

998 ~~(i) remove the portions of the physical evidence likely to contain biological~~
999 ~~evidence related to the violent felony offense; and~~

1000 ~~(ii) preserve the removed biological evidence in a quantity sufficient to permit~~
1001 ~~future DNA testing.~~

1002 ~~[(7)]~~ (8) To comply with the preservation requirements described in this
1003 section, a law enforcement agency or a court may:

1004 (a) retain the biological evidence; or

1005 (b) if a continuous chain of custody can be maintained, return the biological
1006 evidence to the custody of the other law enforcement agency that originally
1007 provided the biological evidence to the law enforcement agency."